Ordinance No. 24 - 4419

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A CONTRACT WITH BAXTER & WOODMAN, INC. FOR PROFESSIONAL DESIGN AND CONSTRUCTION ENGINEERING SERVICES TO BE PROVIDED TO THE VILLAGE OF BARRINGTON RELATIVE TO THE MAIN STREET PEDESTRIAN BRIDGES RECONSTRUCTION PROJECT

WHEREAS, pursuant to the statutory authority of the Village of Barrington ("the Village"), the Village wishes to enter into a contract for creation of Main Street Pedestrian Bridges Design Plans which will include part time construction engineering services and to authorize and accept the Letter of Agreement dated June 6, 2024 with regard to improvements at a total not-to-exceed cost of $125,400 (the "Baxter Woodman Letter of Agreement") received from Baxter & Woodman, Inc. 8678 Ridgefield Road, Crystal Lake, IL 60012 ("Baxter & Woodman") attached hereto as part of Group Exhibit A and thereby made a part hereof; and

WHEREAS, the professional services to be provided by Baxter & Woodman will include but not be limited to early utility coordination and data collection, topographic survey, geotechnical investigation, environmental coordination and permitting, design plans, construction documents, project management, part time field observation, and construction administration (collectively, the "proposed improvement plans"); and

WHEREAS, the Corporate Authorities of the Village find that it is in the best interests of the Village and its residents to authorize the Village to accept and execute the Baxter & Woodman Letter of Agreement dated June 6, 2024 for the proposed professional design and construction engineering services at a not-to-exceed cost of $125,400 and to approve and execute the related Baxter & Woodman Letter of Agreement dated June 6, 2024 and the related Agreement Between the Village of Barrington and Baxter & Woodman, Inc., attached hereto as Group Exhibit A and thereby made a part hereof:

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Barrington, Cook and Lake Counties, Illinois, pursuant to the authority of this Village as a Home Rule unit, as follows:

SECTION 1: The Corporate Authorities find that the facts set forth in the preamble to this Ordinance are true and correct and are hereby incorporated by reference as fully as if set forth herein.

SECTION 2: The Baxter & Woodman Letter of Agreement dated June 6, 2024 as well as the related Addendum to Letter of Agreement Between the Village of Barrington and Baxter & Woodman, Inc attached hereto as Group Exhibit A and thereby expressly made a part hereof, are hereby accepted and approved by the Corporate Authorities of the Village and a contract is hereby awarded to Baxter & Woodman, Inc to provide to the Village the aforesaid professional design and construction engineering services at a total not-to-exceed cost of $125,400, and pursuant to Section 1-6A-6 of the Barrington Village Code, the Corporate Authorities hereby waive any and all requirements for competitive bidding or alternative proposals which might otherwise be

required by law or by ordinance with respect to the aforesaid contract with Baxter & Woodman, Inc.

SECTION 3: The Village President, or her designee, is hereby authorized on behalf of the Village to accept and execute and the Village Clerk is authorized to attest and deliver to Baxter & Woodman, Inc. executed originals of both the Baxter & Woodman Letter of Agreement dated June 6, 2024 and the related Addendum to Letter of Agreement Between the Village of Barrington and Baxter & Woodman, Inc. attached hereto as Group Exhibit A and thereby made a part hereof, which collectively constitute and are referred to herein as "the Contract" and which are all attached hereto as Group Exhibit A and expressly made a part hereof, and to take all other necessary and appropriate actions to accomplish and implement said purchase as herein provided.

SECTION 4: This Ordinance shall be in full force and effect from and after its passage as provided by law.

PASSED THIS 8 DAY OF JULY, 2024, BY ROLL CALL VOTE AS FOLLOWS:

AYES: Trustees Sholeen, Wondrasek, Duncan, Moran, Riggs + President Darch

NAYS: None

ABSENT: Trustee Kohmeyer

RECUSE: None

APPROVED THIS 8th DAY OF JULY, 2024

Karen Y Darch

Karen Darch, Village President

ATTESTED AND FILED THIS
8TH DAY OF JULY, 2024

Tony Ciganek

Tony Ciganek, Village Clerk

Village of Barrington CORPORATE SEAL Cook & Lake Counties, IL

GROUP EXHIBIT A

(1) Baxter & Woodman, Inc. Letter of Agreement dated June 6, 2024 at a not-to-exceed cost of $125,400, and
(2) Addendum to the Letter of Agreement Between the Village of Barrington and Baxter & Woodman, Inc

ADDENDUM TO LETTER OF AGREEMENT BETWEEN THE VILLAGE OF BARRINGTON AND BAXTER & WOODMAN, INC. FOR PROFESSIONAL DESIGN AND CONSTRUCTION ENGINEERING SERVICES

THIS ADDENDUM TO LETTER OF AGREEMENT (hereinafter, the "Addendum") is made this _____ day of _____, 2024, by and between the VILLAGE OF BARRINGTON (hereinafter referred to as "Village") and Baxter & Woodman, INC., 8678 Ridgefield Road, Crystal Lake, IL 60012 (hereinafter referred to as "Consultant") (the Village and the Consultant are sometimes referred to herein as the "Parties") for the performance of certain professional design and construction engineering services for the Village's Main Street Pedestrian Bridges Reconstruction Project (collectively referred to herein as the "Project", the "Work", or the "Services") pursuant to and as more specifically set forth in the Consultant's Letter of Agreement dated June 6, 2024 at a not-to-exceed cost of $125,400.00 (hereinafter referred to as the "Consultant's Letter of Agreement"), a copy of which is attached hereto as Exhibit A and thereby made a part hereof. This Addendum and the Consultant's Letter of Agreement shall constitute the Contract Documents (sometimes collectively referred to herein as the "Contract" or the "Contract Documents"). In the event of any conflict between the Consultant's Letter of Agreement and this Addendum, the provisions of this Addendum shall supersede, prevail, and control.

WITNESSETH:

In consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. Scope of Services: The Consultant agrees to and shall timely perform and fully complete all of the Services relative to the Project as set forth in the Consultant's Letter of Agreement dated June 6, 2024 attached hereto and made a part of this Addendum as Exhibit A (the "Services").

2. Payment:
   A. Not to Exceed Payment: The Village agrees to pay the Consultant, and the Consultant agrees to accept as compensation for all Services required by this Addendum the amount(s) set forth as follows:
      ☒ the amount(s) set forth in the Consultant's Letter of Agreement; and
      ☒ subject to a not-to-exceed amount of $125,400.00 ("Contract Price")

   B. Invoices for Payments: The Consultant agrees to and shall prepare and submit:
      ☐ an invoice to the Village which the Village shall pay upon completion and approval of the Services; or
      ☒ invoices for progress payments to the Village as hereinafter set forth for Services completed to date. Invoices shall be prepared monthly and shall document the time/hours expended as the Services are completed to date by the Consultant.

   C. Village's Compliance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, et seq.) (the "Act). The Consultant and the Village both acknowledge and agree that the Village complies with the Act, which states that any bills approved for payment shall be paid within thirty (30) days after date of approval of the Consultant's invoice by the Corporate Authorities of the Village, and the parties both also agree that any payment(s) due to the Consultant for Services rendered or to be rendered to the Village shall be paid by the Village pursuant to the provisions of the Act. Notwithstanding any other provisions of any Contract Document, the Village shall not, in any manner, be considered to have accepted the Services, or any part thereof, or to have waived any claim related to such Services by making a final payment or by making any progress payment of any amount, where the Village determines that such Services, or part thereof, are defective, deficient, or not in conformance with the Contract Documents.

3. Contract Documents: The term "Contract" or "Contract Documents" means and includes, but is not limited to, the following, which are each attached hereto and thereby made a part hereof:
   A. This Addendum
   B. The Consultant's Letter of Agreement dated June 6, 2024

   In the event of any conflict between this Addendum and any other Contract Document, this Addendum shall prevail and control over the terms and conditions set forth in such other Contract Documents.

4. Time is of the Essence; Dates of Commencement and Completion: Time is of the essence in this Contract. The Services to be performed by the Consultant under the Contract Documents shall commence no later than August 1, 2024 (hereinafter the "Commencement Date"), with Consultant's submittal of preliminary design plans by October 31, 2024, and pending permit approvals before December 15, 2024, final design plans and construction documents no later than December 31, 2024 (hereinafter the "Design Completion Date"), Notwithstanding any other provision of this Agreement, the Consultant shall not have liability for or be deemed in breach because of delays caused by any factor outside of its reasonable control, including but not limited to natural disasters, adverse weather, or acts of the Village, third parties, or governmental agencies, due to which the Design Completion Date may be modified in writing with the prior approval of the Village. If the Consultant fails to complete the design services by the Design Completion Date, the Village shall thereafter have the right to have the Services completed by another independent contractor, and in such event, the Village shall have the right to deduct the cost of such completion so incurred by the Village from payments otherwise due to the Consultant for the Services and/or the right to recover any excess cost of completion from the Consultant to the extent that the total cost incurred by the Village for the completion of the Services which are the subject of the Contract Documents exceeds the Contract Price.

5. Venue and Choice of Law: The Consultant and the Village agree that the venue for any and all disputes shall solely be in Cook County, Illinois, in which the Village's Village Hall is located. This Addendum and all other Contract Documents shall be construed and interpreted in accordance with the laws of the State of Illinois.

6. Nonassignability. The Consultant shall not assign this Contract, or any part thereof, to any other person, firm, or corporation without the prior written consent of the Village, which shall not be unreasonable withheld, and in no case shall such consent relieve the Consultant or its surety from the obligations herein entered into by the same or change the terms of this Contract.

7. Notices. All notices required by the Contract Documents shall be given in writing and shall be served by one party to the other party via email (effective when transmitted), facsimile (effective when transmitted), personal delivery (effective when delivered), commercial overnight delivery (effective when delivered), or by mail (effective when mailed).

8. Right to Alter Scope of Services Reserved: The Village reserves the right to alter the plans, extend or reduce the Scope of Services, add to the Scope of Services as may be necessary, and increase or decrease the scope and/or quantity of the Services, including the deduction or cancellation of any one or more of the unit price items, or to cancel the Contract and the Services in their entirety for any reason. If any Services are extended or increased, Consultant will have the right to additional compensation for the performance of these Services.

9. Control and Review of Services: Unless otherwise specified in the Contract Documents, review, acceptance or rejection of Services shall be made after delivery thereof. Final review, acceptance and/or rejection of the Services shall not impose liability on the Village for Services not in compliance with the Contract Documents as determined solely by the Village. Payment to the Consultant shall not be due on rejected Services until and unless fully corrected and/or replaced by the Consultant as determined by the Village. All Services provided by the Consultant shall be performed in compliance with this Addendum and the other Contract Documents as determined solely by the Village, and this Addendum shall control.

10. Timely Written Response and Written Report(s) of Resolution Relative to Certain Incident(s), Claim(s) and/or Complaint(s):

    A. All alleged incident(s), claim(s), or complaint(s) related to any alleged death, injury and/or damage to persons and/or to public or private property related to the Consultant's work or Services provided pursuant to this Contract shall be reported to the Village and resolved by the Consultant and/or its agent in a timely manner.

B. Within three (3) business days after receipt by Consultant of an initial written or verbal notice of any such incident, claim, or complaint, the Consultant shall also provide to the Village, and to any third-party making such claim or complaint, the name, telephone number, and cellular number of the Consultant's officer or employee who will be responsible for managing the resolution thereof until its final resolution by the Consultant and/or by the Consultant's insurer or agent.

C. Within ten (10) business days after the Consultant's receipt of the first notice of an alleged incident, claim, or complaint related to any alleged death, injury, and/or damage to persons and/or to public or private property (the "incident, claim, or complaint"), the Consultant or its agent(s) shall provide to the Village and to any third-party person making such claim or complaint an initial written response relative to such incident, claim or complaint, and the efforts and current progress of the Consultant and/or its agents to date toward the resolution of such incident, claim or complaint.

D. If complete resolution of the incident, claim, or complaint has not been reached within the aforesaid ten (10) business day period, the Consultant or its agent shall continue to use all reasonable efforts to fully resolve the incident, claim, or complaint, and to that end, further updated written status reports of resolution, or progress toward resolution, as the case may be, of such incident, claim, or complaint shall be provided to the Village by the Consultant not less than monthly until such incident, claim, or complaint is fully resolved.

E. The Consultant or its agents will be expected to fully resolve or at least begin the cure process of most incident(s), claim(s), or complaint(s) involving minor damage to public or private property within said initial ten (10) business day period after the Consultant receives its initial verbal or written notice of such incident, claim, or complaint.

11. Insurance:

A. Prior to Commencement of Work and/or Services:

(i) Prior to commencement of providing any Services under the Contract Documents, Consultant shall supply to the Village certificates of insurance as specified below, provided, however, these insurance requirements shall not be applicable to any Contract which is only for the purchase of goods by the Village. Consultant shall not start the Services contemplated by the Contract until Consultant has obtained all insurance required under this Paragraph 11, and all such insurance coverage has been obtained and approved by the Village Manager, or his designee.

(ii) Minimum Scope of Insurance: Coverage shall be at least as broad as Insurance Services Office ("ISO") Commercial General Liability occurrence form CG 00 01 04 13 with the "Village of Barrington and its elected and appointed officers, officials, and employees" named as additional insureds on a primary and non-contributory basis. This primary, non-contributory additional insured coverage shall be confirmed through the following required policy endorsements (or their substantial equivalents): ISO Additional Insured Endorsement CG 20 10 04 13 or CG 20 26 04 13, and CG 20 01 04.

B. Insurance Required: The Consultant shall procure and maintain, for the duration of the Contract, insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the performance of the Services hereunder by the Consultant, its employees, subconsultants, and other agents, and:

(i) Commercial General Liability:

(a) $1,000,000 combined single limit per occurrence for bodily injury, and property damage and $1,000,000 per occurrence for personal injury. The general aggregate shall be $2,000,000.

(b) The Village of Barrington, and its elected and appointed officers, officials, and employees, are to be named and covered as additional insureds as respects: liability arising out of the Consultant's Services, including activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, leased or used by the Consultant, or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Village of Barrington, and its elected and appointed officers, officials, and employees, , provided,

however, said additional insureds will not be required as to Consultant's Worker's Compensation or Professional Liability coverages.

(c) The Consultant's insurance coverage shall be primary and non-contributory as respects the Village of Barrington, and its elected and appointed officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Village of Barrington, and/or on behalf of its elected and appointed officers, officials, employees, agents and/or volunteers shall be excess of Consultant's insurance and shall not contribute with it.

(d) Any failure to comply with reporting provisions of any applicable insurance policies shall not affect coverage provided to the Village of Barrington, and its elected and appointed officers, officials, employees, agents and/or its volunteers.

(e) The Consultant's insurance shall contain a Severability of Interests/Cross-Liability clause or language stating that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(f) If any commercial general liability insurance is being provided under an excess or umbrella liability policy that does not "follow form", then the Consultant shall be required to name the "Village of Barrington, and its elected and appointed officers, officials, and employees" as additional insureds.

(g) All general liability coverages shall be provided on an occurrence policy form. Claims-made general liability policies will not be accepted.

(h) The Consultant and all subconsultants hereby agree to waive any limitation as to the amount of contribution recoverable against them by the Village of Barrington, and/or by its officers, officials, employees, agents and/or its volunteers. This specifically includes any limitation imposed by any state statute, regulation, or case law.

(ii) ISO Business Auto Liability coverage form number CA 00 01, Symbol 01 "Any Auto": $1,000,000 combined single limit per occurrence for bodily injury, and property damage and $1,000,000 per occurrence for personal injury.

(iii) Workers' Compensation Insurance: Such coverage as required by the Workers' Compensation Act of the State of Illinois with coverage of statutory limits and Employers' Liability Insurance with limits of $1,000,000 per accident. The insurer shall agree to waive all rights of subrogation against the "Village of Barrington, its elected and appointed officers, officials, employees, agents and volunteers" for losses arising from the Services provided by the Consultant for the Village.

(iv) Professional Liability:

(a) Professional liability insurance with limits not less than $1,000,000 each claim with respect to negligent acts, errors and omissions in connection with professional services to be provided under the contract, with a deductible not-to-exceed $50,000 without prior written approval.

(b) If the policy is written on a claims-made form, the retroactive date must be equal to or preceding the effective date of the contract. In the event the policy is cancelled, non-renewed or switched to an occurrence form, the Consultant shall be required to purchase supplemental extending reporting period coverage for a period of not less than three (3) years.

(v) Umbrella Policy: If the general aggregate limit for Commercial General Liability coverage provided is less than $2,000,000, pursuant to Section 11(B)(i) above, then a $1,000,000 Umbrella

Policy shall also be provided which policy shall follow all required coverages as set forth above, other than Worker's Compensation and Professional Liability coverages.

C. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Village of Barrington, upon request.

D. All Coverages:
   (i) No Waiver. Under no circumstances shall the Village, or its officers, officials, employees, agents or volunteers be deemed to have waived any of the insurance requirements of this Contract by any act or omission, including, but not limited to:
      (a) Allowing work and/or performance of the Services by Consultant or any subconsultant to start before receipt of Certificates of Insurance and Additional Insured Endorsements.
      (b) Failure to examine, or to demand correction of any deficiency, of any Certificate of Insurance and Additional Insured Endorsement received.
   (ii) Each insurance policy required shall have the Village of Barrington, expressly endorsed onto the policy as a Cancellation Notice Recipient. Should any of the policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
   (iii) When requested by the Village Manager, or his designee, Consultant shall promptly provide the respective original insurance policies for review and approval by the Village Manager, or his designee.

E. Acceptability of Insurers: Insurance is to be placed with insurers with a Best's rating of no less than A-, VII and approved to do business in the State of Illinois.

F. Verification of Coverage: Consultant shall furnish the Village of Barrington, with certificates of insurance naming the "Village of Barrington, its elected and appointed officers, officials, employees, agents and volunteers", as additional insureds (except on Professional Liability), and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the Village Manager, or his designee, before any work and/or performance of the Services commences. The following additional insured endorsements may be utilized (or their substantial equivalent): ISO Additional Insured Endorsements CG 20 10 04 13 or CG 20 26 04 13, and CG 20 37 04 13 – Completed Operations, where required. In the event a claim is filed, the Village reserves the right to request full certified copies of the insurance policies and endorsements.

G. Subconsultants: All subconsultants shall furnish their own separate Insurance. All coverages for subconsultants shall be subject to all of the requirements stated herein.

H. Village May Rely on Its Membership in a Self-Insured Risk Pool: Notwithstanding any other provision in any contract document, the undersigned herein agree that the Village, at its own option, may satisfy its obligation to purchase any insurance required of the Village through its membership in a self-insured risk pool. The rights of the Village as a member of a governmental self-insurance pool are intended to and shall constitute full satisfaction for any of the insurance required of Consultant to be maintained by the Village.

I. Insurance Certifications: In addition to providing Certificates of Insurance as required by the Contract Documents, the Consultant shall submit to the Village a signed certification with each Request for Payment, stating that all the insurance required of the Consultant remains in force. Failure to submit such a certification shall be grounds to withhold payment in full or in part.

J. Insurance Requirements Cannot Be Waived by Village: Under no circumstances shall the Village be deemed to have waived any of the insurance requirements of the related Contract by any act or omission, including, but not limited to: (1) allowing the Services to commence by the Consultant or any subconsultant of any tier before receipt of Certificates of Insurance; (2) failing to review any

Certificates of Insurance received; (3) failing to advise the Consultant or any subconsultant of any tier that any Certificate of Insurance fails to contain all the required insurance provisions, or is otherwise deficient in any manner; or (4) issuing any payment without receipt of a Sworn Statement from the Consultant and all subconsultants of any tier stating that all the required insurance is in force. The Consultant agrees that the obligation to provide the insurance required by this Addendum or any of the contract documents is solely its responsibility and that this is a requirement which cannot be waived by any conduct, action, inaction or omission by the Village. Consultant shall also protect the Village by specifically incorporating this Paragraph into every subcontract entered into relative to the Services contemplated herein and also requiring that every subconsultant incorporate this Paragraph into every sub-subcontract it enters into relative to the Services contemplated herein.

K. Liability of Consultant and Subconsultant is Not Limited by Purchase of Insurance: Nothing contained in the insurance requirements of this Addendum or any Contract Documents is to be construed as limiting the liability of the Consultant or the liability of any subconsultant of any tier, or either of their respective insurance carriers. The Village does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect the Village, the Consultant, or any subconsultant's interest or liabilities, but are merely required minimums. The obligation of the Consultant and every subconsultant of any tier to purchase insurance shall not, in any way, limit their obligations to the Village in the event that the Village should suffer an injury or loss in excess of the amount recoverable through insurance, or any loss or portion of the loss which is not covered by either the insurance of the Consultant or any subconsultant's insurance.

L. Notice of Bodily Injury or Property Damage: The Consultant shall notify the Village, in writing, of any actual or possible claim for personal injury or property damage relating to the Services, or of any occurrence which might give rise to such claim, promptly upon obtaining first knowledge of same.

M. Updated Proof Required: The Consultant agrees that at any time upon the demand of the Village, updated proof of such insurance coverage will be submitted to the Village. There shall be no additional charge to the Village for said insurance.

N. Higher and More Expansive Standard Applicable: To the extent other insurance requirements of the Contract Documents contradict this Paragraph 11, the more expansive and higher standard, in terms of type and amount of coverage, shall govern.

12. Indemnity:

A. To the fullest extent permitted by law, the Consultant hereby agrees to indemnify and hold harmless the Village, its elected and appointed officers, officials, and employees against all injuries, deaths, loss, damages, claims, any claims or amount recovered by reason of any infringement of any patent, trademark or copyright, suits, liabilities, judgments, costs and expenses, which may in anywise accrue against the Village, its elected and appointed officers, officials, and employees, but only to the extent caused by the negligent performance of the Services by the Consultant, its employees, or subconsultants, or which may in anywise result therefrom.

B. Consultant expressly understands and agrees that any insurance policies required by this Contract, or otherwise provided by the Consultant, shall in no way limit the responsibility to indemnify, keep and save harmless the Village, its elected and appointed officials, employees or agents as herein provided.

C. Consultant further agrees that to the extent that money is due the Consultant by virtue of this Contract as shall be considered necessary in the judgment of the Village, such funds may be retained by the Village to protect itself against said loss until such claims, suits, or judgments shall have been settled or discharged and/or evidence to that effect shall have been furnished to the satisfaction of the Village.

D. In the event that the Village is not immune from liability under any applicable law, and only in such event, the Village hereby agrees to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, to the extent caused by the Village's negligent acts in connection with the Project and the acts of the Village, and/or any of its officers, trustees and/or employees.

E. Neither the Village nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence, or for the willful misconduct of their respective officers, trustees, employees and/or agents.
F. The provisions of this Paragraph 12 shall survive any termination of the Contract.

13. Village Confidential Information:
A. Consultant represents that it shall not disclose, use, sell, rent, trade, or otherwise provide Village Confidential Information to any person, firm, or entity for any purpose outside of the specific purposes of the Contract Documents, except as necessary to comply with applicable State or Federal laws. Notwithstanding the foregoing, this shall not apply to any portion of the Information which was in the public domain prior to Consultant's receipt, or which subsequently becomes part of the public domain by publication or otherwise without Consultant's wrongful act or any Information that may need to be disclosed pursuant to governmental or judicial requirement or subpoena, provided Consultant has given Village reasonable prior notice of the proposed disclosure and an opportunity to secure a protective order thereon.
B. The provisions of this Paragraph 13 shall survive any termination of the Contract.

14. No Conflicts of Interest: The Consultant represents that to the best or their knowledge it has no conflict of interest and has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift(s), or any other consideration, contingent upon or resulting from the award or the making of this Contract.

15. Compliance with Laws: Consultant shall comply with all published applicable federal, state, and local laws, ordinances, rules and regulations, and any and all orders and decrees of any court, administrative body or tribunal applicable to the performance of the Contract. Included within the scope of the laws, ordinances, rules and regulations referred to in this paragraph, but in no way to operate as a limitation, are: Occupational Safety & Health Act ("OSHA"); Illinois Department of Labor ("IDOL"), Department of Transportation, and all forms of traffic regulations; public utility, Intrastate and Interstate Commerce Commission regulations; Workers' Compensation Laws, the Social Security Act of the Federal Government and any of its titles, the Illinois Human Rights Act, and EEOC statutory provisions and rules and regulations. Evidence of specific regulatory compliance will be provided by the Consultant if requested by the Village.

16. Equal Employment Opportunity: The Consultant shall be an "equal opportunity employer" as defined in the United States Code Annotated. The Consultant shall be required to comply with the President's Executive Order No. 11246, as amended, and the requirements for Bidders and Consultants under this order are explained in 41 CFR 60-4. The Consultant shall fully comply with all applicable provisions of the Illinois Human Rights Act.

17. Certifications: By the execution of this Addendum, the Consultant certifies that: (1) the Consultant is not delinquent in the payment of any tax administered by the Illinois Department of Revenue as required by 65 ILCS 5/11-42.1-1; (2) the Consultant has a written sexual harassment policy as required by and shall otherwise comply in all respects with the Illinois Human Rights Act (775 ILCS 5/2-105(A)(4)); (3) the Consultant will provide a drug-free workplace as required by and shall otherwise comply with the Illinois Drug-Free Workplace Act (30 ILCS 580/1, et seq.); (4) the Consultant has in place a written policy as required by and that it does and shall otherwise comply with the Illinois Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1, et seq.); and (5) the Consultant is not and/or was not barred from bidding on this Contract pursuant to Section 33E-3 or 33E-4 of the Illinois Criminal Code (720 ILCS 5/33E-3 and 5/33E-4).

18. Project Documentation: Upon execution of this Addendum relative to the Project, notwithstanding anything contained in any other Contract Documents to the contrary, the Consultant and its subconsultants agree to and shall release to the Village any and all right, title, and interest in and to any and all Project

Documentation depicting, documenting, or recording the Services, and/or the Work, and/or the Project which is the subject of the Contract Documents, prepared or created by the Consultant and/or its subconsultants, including but not limited to any and all drawings, plans, specifications, photos, reports, videos, and/or other recordings on any electronic media (sometimes collectively referred to as "Project Documentation"), and any and all of such Project Documentation shall become the property of the Village. The Consultant and its subconsultants further warrant to the Village that they have the legal right to convey said Project Documentation to the Village. The Services contemplated by the Contract Documents shall not be considered complete until and unless legible and complete physical and electronic copies of all such Project Documentation have been delivered to the Village. The Village may reuse Project Documentation without the prior written authorization of the Consultant, but the Village agrees to waive any claim against the Consultant arising from any unauthorized reuse or modification of the Project Documentation.

19. Illinois Freedom of Information Act (5 ILCS 140/1, et seq.): As a unit of local government, the Village is subject to the Illinois Freedom of Information Act (FOIA), as amended. Therefore, after award of the Contract, responses, documents, and materials submitted to the Village by the Consultant will be made available for public inspection in accordance with the FOIA, unless otherwise determined by a Village FOIA officer after award of a contract. The Village and the Consultant and any subconsultant(s) shall maintain their respective records relating to the performance of the Contract Documents in compliance with the requirements of the Local Records Act (50 ILCS 205/1, et seq.) until written approval for the disposal of such records is obtained from the Local Records Commission. All books and records required to be maintained by the Village and the Consultant and any subconsultant(s) shall be available for review by the other. The Consultant and its subconsultant(s) and the Village shall cooperate with each other (a) with all requests for records made pursuant to the Freedom of Information Act (5 ILCS 140/1, et seq.), (b) with any request for records made pursuant to any audit, and (c) by providing full access to and copying of all relevant books and records of Consultant within a time period which allows the Village to timely comply with the time limits imposed by the Freedom of Information Act (5 ILCS 140/1, et seq.). Consultant must inform the Village, in writing, of the exact materials in the Consultant's Letter of Agreement which it claims are exempt from disclosure pursuant to the FOIA as proprietary or as may otherwise be protected. The obligations imposed by this section shall survive final payment and the termination of the other obligations imposed by the Contract.

20. Consultant is an Independent Contractor: It is mutually understood and agreed that the Consultant shall have full control of the ways and means of performing the Professional Services referred to above and/or which is the subject of this Addendum and the related Contract and that the Consultant or his/its employees, representatives or subconsultants are in no sense employees of the Village, it being specifically agreed that in respect to the Village, the Consultant and any party employed by the Consultant bears the relationship to the Village of an independent contractor.

21. Arbitration Deleted from Contract Documents; No Attorneys' Fees: Any provision in the Contract and any other contract documents referring to the submission of claims or disputes to arbitration shall herein be deleted. Notwithstanding anything contained in the Contract and any other contract documents to the contrary, it is the intent of the parties that arbitration is a remedy which shall not exist under the Contract and any other contract documents, and no party shall be entitled to recover attorneys' fees or court costs in any action to enforce or interpret this Addendum and the related Contract and contract documents.

22. Duration: This Addendum and the related Contract Documents shall be in effect from the date of the Contract until the completion of the Services, but the obligations of the Consultant under Paragraphs 12 and 13 shall continue after such termination.

23. Advertisement: The Consultant is specifically denied the right to use in any form or medium the name of the Village for public advertising unless express permission is granted by the Village.

24. Amendments: No agreement or understanding to modify this Addendum or the related Contract Documents shall be binding upon the Village unless in writing and signed by the Village's authorized agent. All

specifications, drawings, and data submitted to the Consultant with this Addendum or the related Contract Documents are hereby incorporated and made part thereof.

25. Termination; Remedies: Notwithstanding any other provision hereof, the Village may terminate the Contract with the Consultant and this Addendum in the event of a default by the Consultant or without cause at any time upon 15 days prior written notice to the Consultant. In the event that the Contract with the Consultant and this Addendum are so terminated and the Consultant is not in default or breach of the Contractor and/or this Addendum, the Consultant shall be paid for Services actually performed and reimbursable expenses actually incurred, if any, prior to termination, not exceeding the value of the Services completed which shall be determined on the basis of the rates set forth in the Consultant's Letter of Agreement (Exhibit A).

26. Supersede: The terms, conditions and specifications set forth in this Addendum shall supersede, govern, and prevail over any inconsistent terms, conditions, and/or specifications on any other Contract Documents.

27. Severability: In the event any section, subsection, paragraph, sentence, clause, phrase or provision of this instrument or part thereof shall be deemed unlawful, invalid, unenforceable or ineffective by any court of competent jurisdiction, such decision shall not affect the validity, enforceability or effectiveness of the remaining portions of this instrument.

28. Facsimile or Digital Signatures: Facsimile or digital signatures shall be sufficient for purposes of executing, negotiating, and finalizing this Contract, and this Contract shall be deemed delivered as if containing original signatures if such delivery is made by emailing a PDF of a scanned copy of the original, hand-signed document, and/or by use of a qualified, established electronic security procedure mutually agreed upon by the Parties.

29. Counterparts: This Addendum may be executed in one or more counterparts, which counterparts when affixed together, shall constitute one and the same original document.

30. No Third-Party Beneficiaries: The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

31. Entire Agreement: The Contract Documents, which include the Consultant's Letter of Agreement dated June 6, 2024 and this Addendum (including all Exhibits attached thereto which by reference are made a part of this Addendum) and all other written agreements and/or other instruments signed by all of the parties hereto which by their express terms are a part of the Contract Documents, are the final expression of, and contain the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed by their duly authorized officer in quadruplicate counterparts, each of which shall be considered as an original.

CONSULTANT:
BAXTER & WOODMAN, INC.

By: _____

_____
Its Authorized Agent

ATTEST: _____
Its _____

VILLAGE OF BARRINGTON

By: Karen Y. Darch
Karen Y. Darch, its Village President

ATTEST: Tony Ciganek
Tony Ciganek, Village Clerk

VILLAGE OF BARRINGTON CORPORATE SEAL

(05/14/24)

EXHIBIT A

Consultant's Letter of Agreement dated June 6, 2024

BAXTER & WOODMAN
Consulting Engineers
8678 Ridgefield Road, Crystal Lake, IL 60012 • 815.459.1260 • baxterwoodman.com

June 6, 2024

Ms. Marie Hansen, PE, CFM
Assistant Village Manager & Director of Development Services
Village of Barrington
200 S. Hough Street
Barrington, IL 60010

Subject: Main Street Pedestrian Bridge Reconstruction – Engineering & Construction Services

Dear Ms. Hansen:

Baxter & Woodman, Inc. is pleased to submit this Proposal to perform Design and Construction Engineering for the Main Street Pedestrian Bridge Replacement Project.

Two existing bridges will be reconstructed: one on either side of Main Street crossing over Flint Creek Tributary 0.8 mile east of US-14. The north bridge is anticipated to be a superstructure replacement only, re-using and repairing the existing abutments. The south bridge is anticipated to be a total replacement, with new abutments and foundations placed behind the existing spillway walls. The new bridge superstructures will be prefabricated steel truss structures, located on the same alignment as the existing bridges.

During the Design and Permitting phase, Baxter & Woodman, Inc. will provide topographic survey; geotechnical investigation; structural design; horizontal and vertical geometry; demolition, grading, and ADA plans; and bidding assistance. During construction, Baxter & Woodman will provide part-time construction engineering services.

The project will utilize local funding. IDOT coordination is anticipated. Coordination with Lake and/or Cook Counties is anticipated.

Scope of Services

1. EARLY COORDINATION AND DATA COLLECTION
   - 1.1 *Utility Locates & Coordination:* Contact JULIE to identify utilities that have facilities along the project limits. Request utility atlas maps and plot locations and sizes of existing utilities in electronic drawings. Submit preliminary and final plans to utility companies so conflicts and relocation efforts can be identified. Provide ongoing reviews of permitting and utility relocation efforts as requested by the Village.

2. TOPOGRAPHIC SURVEY

2.1 *Topographic Survey:*

A. Perform topographic survey within the project limits. The limits of the survey will be 50-foot width along each existing bridge alignment, from 200 feet west to 200 feet east of each bridge to anticipate potential profile changes (400 feet total). Hydraulic survey will include stream cross sections adjacent to the bridges for the purpose of creating a hydraulic model pursuant to MWRD permitting requirements. State plane coordinates and NAVD 88 will be used for horizontal and vertical controls.

B. *Terrain Model:* Download and develop digital terrain model for use in design and plan preparation.

C. *Right of Way*: Field-locate existing property corners and utilize available tax parcel information to establish an approximate right-of-way. No right-of-way or easement acquisition is anticipated. Work to complete Plat of Easement or Plat of Dedication is not included.

3. GEOTECHNICAL INVESTIGATION

3.1 *Structural Borings:* Utilize Soil and Material Consultants to take two 50-foot structural borings, one at each abutment for the new south bridge (two borings total).

4. PRELIMINARY DESIGN

4.1. *Preliminary Geometric Design:* Develop the preliminary improvement plan, profile, and cross sections throughout the project. Identify design constraints including ADA, obstructions, and drainage limitations.

4.2. *Preliminary Structure Design:* Determine the proposed foundation type and abutment configuration based on geotechnical recommendations and design loads provided by a typical pre-qualified bridge supplier.

5. ENVIRONMENTAL COORDINATION AND PERMITTING

5.1. *MWRD Construction Permit:* Prepare a hydraulic report for submittal to MWRD pursuant to a floodway construction permit. Includes preparation of a hydraulic model, narrative, and exhibits as required by MWRD regulations.

5.2. *Lake County Stormwater Permit Application:* Includes a separate application to the County, with similar content to the MWRD submittal.

5.3. *EcoCAT:* Submit an EcoCAT information request through the IDNR website to identify potentially impacted natural resources. Should potential impacts be identified, consultation may be required. Providing additional project information and fees as

may be required for consultation, are not included in the scope of this project and would be a separate expense to the Village if required. Unique design measures to mitigate impacts from the EcoCAT will also be considered additional services.

5.4. *Clean Water Act Coordination:* Wetlands appear to exist within the project limits; however, wetland impacts are not anticipated. Prepare a request to the U.S. Army Corps of Engineers (USACE) for a letter of no objection for the project based on existing Lake/Cook County wetland mapping. Wetland delineation is included in the scope of this project. Wetland mitigation, if require, would be a separate expense.

6. PLAN PREPARATION

6.1 *Estimate of Cost and Time:* Prepare summary of quantities, estimate of time, schedules of materials and an engineer's estimate of cost.

6.2 *Specifications:* Prepare special provisions in accordance with the Village's guidelines to specify items not covered by the IDOT Standard Specifications for Road and Bridge Construction.

6.3 *Bridge Path Design:* Prepare a plan sheet for the path design including improvement limits, stations and offset callouts, grades, define bridge approach pavement connector limits, label construction limit locations and right of way breaks, erosion control, and note special instructions to the Contractor. Separate removal sheets will be prepared for this project.

6.4 *Maintenance of Traffic and Construction Staging*: Path closure is expected for the duration of construction, and a pedestrian detour plan is anticipated.

6.5 *Structural Plans:* Design bridge abutments in accordance with the approved preliminary drawings, AASHTO LRFD Bridge Design Specifications, and IDOT Bridge Manual including structural engineering plans, details, and special provisions.

6.6 *Detailed Drawings:* Complete required plan sheets required for bidding including Cover, General Notes, Summary of Quantities, Typical Sections, Demolition, and Design Details.

7. QA/QC – Perform in-house peer and milestone reviews by senior staff during project initiation, conceptual review, preliminary, pre-final, and final submittals. Provide ongoing reviews of permitting and utility coordination efforts.

8. ASSIST BIDDING – Provide design assistance and clarification for bid documents. Assist the Village with coordination and scheduling during the bid process. Provide documents for bidding and assist the Village in solicitation of bids from as many qualified bidders as

possible, prepare addendums as necessary, attend bid opening to receive and evaluate bids, tabulate bids, and make a recommendation to the Village for an award of contract.

9. PROJECT MANAGEMENT – Plan, schedule, and control the activities that must be performed to complete the project including budget, schedule, and scope. Coordinate with Village and project team to ensure the goals of the project are achieved. Prepare and submit monthly invoices, coordinate invoices from sub-consultants, and provide a monthly status report via email describing tasks completed the previous month and outlining goals for the subsequent month.

10. PROJECT DELIVERABLES
    - 10.1 *Deliverables:* The following is a list of anticipated final deliverables to the Village for this project:
      - A. Electronic DGN, Geopak, Digital Photos, and GIS files used in project development including Plan, Survey, and Exhibits.
      - B. Electronic Record of Design files including agency correspondence, Drainage Reports and Models, Environmental Reports, Estimates, Exhibits, and related electronic submittals (pdf or as appropriate). Baxter & Woodman utilizes an electronic filing system in lieu of hard copies.
    - 10.2 *Not Included:* The following items are not included within the scope of this project, but can be provided as additional services to the contract:
      - A. Agency review fees
      - B. ROW Acquisition services including title commitments, Plats, Legals, Appraisals, Negotiations
      - C. Environmental Studies (PESA, PSI, etc.)
      - D. Wetland Banking Fees
      - E. Clean Construction or Demolition Debris (CCDD) testing is not included in this scope because it is anticipated that this project will generate only small amounts of excavation haul-off, which will be risk managed as non-special waste.
      - F. Material Testing (construction)

11. CONSTRUCTION SERVICES
    - 11.1 Act as the Owner's representative with duties, responsibilities, and limitations of authority as assigned in the construction contract documents.
    - 11.2 PROJECT INITIATION
      - A. Prepare Award Letter, Agreement, Contract Documents, Performance/Payment Bonds, and Notice to Proceed. Receive Contractor insurance documents.

B. Attend and prepare minutes for the preconstruction conference, and review the Contractor's proposed construction schedule and list of subcontractors.

11.3 CONSTRUCTION ADMINISTRATION

A. Shop drawing and submittal review by Engineer shall apply only to the items in the submissions and only for the purpose of assessing, if upon installation or incorporation in the Project, they are generally consistent with the construction documents. Owner agrees that the contractor is solely responsible for the submissions (regardless of the format in which provided, i.e. hard copy or electronic transmission) and for compliance with the contract documents. Owner further agrees that the Engineer's review and action in relation to these submissions shall not constitute the provision of means, methods, techniques, sequencing, or procedures of construction or extend to safety programs of precautions. Engineer's consideration of a component does not constitute acceptance of the assembled item.

B. Prepare construction contract change orders and work directives when authorized by the Owner.

C. Review the Contractor's requests for payments as construction work progresses and advise the Owner of amounts due and payable to the Contractor in accordance with the terms of the construction contract documents. *1 estimate assumed.*

D. Research and prepare written response by Engineer to request for information from the Owner and Contractor.

11.4 FIELD OBSERVATION – PART TIME

A. Engineer will provide a Resident Project Representative at the construction site on a periodic part-time basis from the Engineer' office of not more than eight (8) hours per regular weekday, not including legal holidays (approximately 98 hours) as deemed necessary by the Engineer, to assist the Contractor with interpretation of the Drawings and Specifications, to observe in general if the Contractor's work is in conformity with the Final Design Documents, and to monitor the Contractor's progress as related to the Construction Contract date of completion.

B. Through standard, reasonable means, Engineer will become generally familiar with observable completed work. If the Engineer observes completed work that is inconsistent with the construction documents, that information shall be communicated to the contractor and Owner to address. Engineer shall not supervise, direct, control, or have charge or authority over any contractor's work, nor shall the Engineer have authority over or be responsible for the means,

methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the site, nor for any failure of any contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the contract documents, which contractor is solely responsible for its errors, omissions, and failure to carry out the work. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or any other person, (except Engineer's own agents, employees, and consultants) at the site or otherwise furnishing or performing any work; or for any decision made regarding the contract documents, or any application, interpretation, or clarification, of the contract documents, other than those made by the Engineer.

C. Part-Time Field Observation provides that the Resident Project Representative will make intermittent site visits to observe the progress and quality of Contractor's executed Work. Part-Time Field Observation does not guarantee the Engineer will observe or comment on work completed by the contractor at times the Resident Project Representative is not present on site. Such visits and observations by the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any.

D. Provide the necessary base lines, benchmarks, and reference points to enable the Contractor to proceed with the work.

E. Keep a daily record of the Contractor's work on those days that the Engineers are at the construction site including notations on the nature and cost of any extra work.

11.5 COMPLETION OF PROJECT – *included in Field Observation and Construction Administration.*

A. Provide construction inspection services when notified by the Contractor that the Project is complete. Prepare written punch lists during final completion inspections.

B. Review the Contractor's written guarantees and issue a Notice of Acceptability for the Project by the Owner.

C. Review the Contractor's requests for final payment and advise the Owner of the amounts due and payable to the Contractor in accordance with the terms of the construction contract documents.

11.6 PROJECT CLOSEOUT – Provide construction-related engineering services including, but not limited to, General Construction Administration and Resident Project Representative Services.

ENGINEERING FEES

Design and Permitting Services
Design and Permitting Services: $95,828
Direct Costs: Geotechnical Investigation (Soil & Material Consultants): $4,872
Design and Permitting Services subtotal: $100,700

Construction Services
Construction Engineering Services: $23,340
Direct Costs: Vehicle Charges - $85 per day x 16 days = $1,360
Construction Services Subtotal: $24,700
Total Design and Construction Services: $125,400

The Village shall pay the Engineer for the above stated scope of services, based upon the Engineer's standard hourly billing rates for actual work time performed plus subconsultants and reimbursement for out-of-pocket expenses including travel, which in total will not exceed $125,400.

Construction engineering fees are based on an assumed number and type of field visits; adjustments may be made to suit actual construction conditions as determined during design.

We appreciate the opportunity to work with the Village on this Project. If you have any questions or need additional information, please do not hesitate to call me at 815-444-3210.

BAXTER & WOODMAN
Consulting Engineers

The attached Standard Terms and Conditions apply to this Proposal. If this Proposal is acceptable, **please sign below and return a copy for our files.**

Sincerely,

BAXTER & WOODMAN, INC.
CONSULTING ENGINEERS

Charles A. Brunner, PE, SE
Vice President

Attachment

VILLAGE OF BARRINGTON

AUTHORIZED BY: Karen Y. Darch

TITLE: Village President

DATE: July 8, 2024

\\corp.baxwood.com\project\Azure\BARRV\230219-Ped Bridge Study\Contracts\Design\230219.40_Proposal_PedBridge_Design+Const.docx

STANDARD TERMS AND CONDITIONS

PLEASE READ THESE STANDARD TERMS AND CONDITIONS ("TERMS") CAREFULLY BEFORE EXECUTING THE LETTER PROPOSAL PRESENTED BY BAXTER & WOODMAN, INC. ("BW"). BY EXECUTING THE LETTER PROPOSAL, OWNER AGREES TO BE BOUND BY THESE TERMS, THE PROVISIONS OF THE LETTER PROPOSAL, AND THE PROVISIONS OF ANY DOCUMENT REFERRING TO THESE TERMS OR THE LETTER PROPOSAL, ALL OF WHICH SHALL COLLECTIVELY CONSTITUTE THE "AGREEMENT".

Owner's Responsibility – Provide BW with all criteria and full information for the "Project", which is generally otherwise identified in the Letter Proposal. BW will rely, without liability, on the accuracy and completeness of all information provided by the Owner (as defined in the Letter Proposal) including its consultants, contractors, specialty contractors, subcontractors, manufacturers, suppliers and publishers of technical standards ("Owner Affiliates") without independently verifying that information. The Owner represents and warrants that all known hazardous materials on or beneath the site have been identified to BW. BW and their consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, unidentified or undisclosed hazardous materials unless this service is set forth in the Letter Proposal.

Schedule for Rendering Services - The agreed upon services shall be completed within a reasonable amount of time. If BW is hindered, delayed or prevented from performing the services as a result of any act or neglect of the Owner, any Owner Affiliate, or force majeure event, BW's work shall be extended and the rates and amounts of BW's compensation shall be equitably adjusted in a written instrument executed by all Parties.

Invoices and Payments - The fees to perform the proposed scope of services constitutes BW's estimate to perform the agreed upon scope of services. Circumstances may dictate a change in scope, and if this occurs, an equitable adjustment in compensation and time shall be agreed upon by all Parties by written agreement. No service for which added compensation will be charged will be provided without first obtaining written authorization from the Owner. BW invoices shall be due and owing by Owner in accordance with the terms and provisions of the State of Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et seq.).

Opinion of Probable Construction Costs - BW's opinion of probable construction costs represents its reasonable judgment as a professional engineer. Owner acknowledges that BW has no control over construction costs or contractor's methods of determining prices, or over competitive bidding, or market conditions. BW cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from BW's opinion of probable construction costs.

Standards of Performance – (1) The standard of care for all services performed or furnished by BW will be the same care and skill ordinarily used by professionals practicing under similar circumstances, at the same time and in the same locality on similar projects. BW makes no warranties, express or implied, in connection with its services; (2) BW shall be responsible for the technical accuracy of its services and documents; (3) BW shall use reasonable care to comply with applicable laws, regulations, and Owner-mandated standards; (4) BW may employ such sub-consultants as BW deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objection by Owner; (5) BW shall not supervise, direct, control, or have authority over any contractors' work, nor have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the site, nor for any failure of any contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work; (6) BW neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the contract documents; (7) BW is not acting as a municipal advisor as defined by the Dodd-Frank Act. BW shall not provide advice or have any responsibility for municipal financial products or securities; (8) BW is not responsible for the acts or omissions of any contractor, subcontractor, or supplier, or any of their agents or employees or any other person at the site or otherwise furnishing or performing any work; (9) Shop drawing and submittal review by BW shall apply only to the items in the submissions and only for the purpose of assessing if, upon installation or incorporation in the Project work, they are generally consistent with the contract documents. Owner agrees that the contractor is solely responsible for the submissions (regardless of the format in which provided, i.e. hard copy or electronic transmission) and for compliance with the construction documents. Owner further agrees that BW's review and action in relation to these submissions shall not constitute the provision of means, methods, techniques, sequencing or procedures of construction or extend to safety programs or precautions. BW's consideration of a component does not constitute acceptance of the assembled item; (10) BW's site observation during construction shall be at the times agreed upon in the Project scope. Through standard, reasonable means, BW will become generally familiar with observable completed work. If BW observes completed work that is inconsistent with the construction documents, information shall be communicated to the contractor and Owner for them to address.

Insurance - BW will maintain insurance coverage with the following limits and Certificates of Insurance will be provided to the Owner upon written request:

Worker's Compensation:	Statutory Limits	Excess Umbrella Liability:	$10 million per claim and aggregate
General Liability:	$1 million per claim	Professional Liability:	$5 million per claim
	$2 million aggregate		$10 million aggregate
Automobile Liability:	$1 million combined single limit		

In no event will BW's collective aggregate liability under or in connection with this Agreement or its subject matter, based on any legal or equitable theory of liability, including breach of contract, tort (including negligence), strict liability and otherwise, exceed the contract sum to be paid to BW's under this Agreement. Any claim against BW arising out of this Agreement may be asserted by the Owner, but only against the entity and not against BW's directors, officers, shareholders or employees, none of whom shall bear any liability and may not be subject to any claim.

BAXTER & WOODMAN Consulting Engineers

Indemnification and Mutual Waiver – (1) To the fullest extent permitted by law, BW shall indemnify and hold harmless the Owner and its officers and employees from claims, costs, losses, and damages ("Losses") arising out of or relating to the Project, provided that such Losses are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any grossly negligent act or omission of BW; (2) To the fullest extent permitted by law, Owner shall indemnify and hold harmless BW and its officers, directors, employees, agents and consultants from and against any and all Losses (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project provided that any such Losses are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent arising out of or occurring in connection with the Owner's, or Owner's officers, directors, employees, consultants, agents, or others retained by or under contract to the Owner, negligent act or omission, willful misconduct, or breach of this Agreement; (3) To the fullest extent permitted by law, Owner and BW waive against each other, and the other's employees, officers, directors, insurers, and consultants, any and all claims for or entitlement to special, incidental, indirect, enhanced, punitive, or consequential damages, in each case regardless of whether such party was advised of the possibility of such losses or damages or such losses or damages were otherwise foreseeable, and notwithstanding the failure of any agreed or other remedy of its essential purpose; (4) In the event Losses or expenses are caused by the joint or concurrent fault of the BW and Owner, they shall be borne by each party in proportion to its respective fault, as determined by a mediator or court of competent jurisdiction; (5) The Owner acknowledges that BW is a business corporation and not a professional service corporation, and further acknowledges that the corporate entity, as the party to this contract, expressly avoids contracting for individual responsibility of its officers, directors, or employees. The Owner and BW agree that any claim made by either party arising out of any act of the other party, or any officer, director, or employee of the other party in the execution or performance of the Agreement, shall be made solely against the other party and not individually or jointly against such officer, director, or employees.

Termination - Either party may terminate this Agreement upon ten (10) business days' written notice to the other party in the event of failure by the other party to comply with the terms of the Agreement through no fault of the terminating party. A condition precedent to termination shall be conformance with the Dispute Resolution terms below. If this Agreement is terminated, Owner shall receive reproducible copies of drawings, developed applications and other completed documents upon written request. Owner shall be liable, and shall promptly pay BW, for all services and reimbursable expenses rendered through the effective date of suspension/termination of services.

Use of Documents – All BW documents (data, calculations, reports, Drawings, Specifications, Record Drawings and other deliverables, whether in printed form or electronic media format, provided by BW to Owner pursuant to this Agreement) are instruments of service and BW retains ownership and property interest therein (including copyright and right of reuse). Owner shall not rely on such documents unless in printed form, signed or sealed by BW or its consultant. Electronic format of BW's design documents may differ from the printed version and BW bears no liability for errors, omissions or discrepancies. Reuse of BW's design documents is prohibited and Owner shall defend and indemnify BW from all claims, damages, losses and expenses, including attorney's fees, consultant/expert fees, and costs arising out of or resulting from said reuse. Project documents will be kept for time periods set forth in BW's document retention policy after Project closeout.

Successors, Assigns, and Beneficiaries – Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or BW to any third party, including any lender, contractor, subcontractor, supplier, manufacturer, other individual, entity or public body, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of the Owner and BW and not for the benefit (intended, unintended, direct or indirect) of any other entity or person.

Dispute Resolution - All disputes between the Parties shall first be negotiated between executives who have authority to settle the dispute for a period of thirty (30) days. If unresolved, disputes shall be then submitted to mediation as a condition precedent to litigation. The mediation session shall be held within forty-five (45) days of the retention of the mediator, and last for at least one (1) full mediation day, before any party has the option to withdraw from the process. If mediation is unsuccessful in resolving a Dispute, then the parties may seek to have the Dispute resolved by a court of competent jurisdiction.

Miscellaneous Provisions – (1) This Agreement is to be governed by the law of the state or jurisdiction in which the project is located; (2) all notices must be in writing and shall be deemed effectively served upon the other party when sent by certified mail, return receipt requested; (3) all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion and/or termination for any reason; (4) any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Owner and BW, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that expresses the intention of the stricken provision; (5) a party's non-enforcement of any provision shall not constitute a waiver of the provision, nor shall if affect the enforceability of that provision or of the remainder of this Agreement; (6) to the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of substantial completion, which is the point where the Project can be utilized for the purposes for which it was intended; (7) this Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter; (8) no amendment to or modification of this Agreement is effective unless it is in writing and signed by each party.